IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 3350 of 2000

Between:

Sri P.V.L.Narsaimha Raju, S/o. late P.V.L.Thimma Raju,
R/o. Opp:- S.B.I, Bheemunipatnam,
Visakhapatnam District.

..... PETITIONER

AND

1. The Commissioner, Bheemunipatnam Municipality,
   Bheemunipatnam, Visakhapatnam District.
2. The Revenue Divisional Officer, Visakhapatnam,
   Visakhapatnam,

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of *Writ of Mandamus* declaring the action of the respondents in directing to dismantle the building in T.S.No. 442-part of Bheemunipatnam Town & Mandal pursuance of the proceedings of the 2nd respondent issued in RC.No. 339/2000-C, dated 15.2.2000 and set aside the same and consequently direct the respondents not to interfere with the building situated in T.S.No.442-part Bheemunipatnam town and Mandal, Visakhapatnam District.

Counsel for the Petitioner: MR. POLISETTI RADHAKRISHNA

Counsel for the Respondent No.1: Mr. S. NAGESWARA REDDY FOR MUNCIPALITIES

Counsel for the Respondent No.2: GP FOR REVENUE

The Court made the following:

ORDER:

For declaring the action of the respondents in directing to dismantle the building in T.S.No.442-part of Bheemunipatnam Town & Mandal pursuant to the proceedings of the 2nd respondent-Revenue Divisional Officer, Visakhapatnam issued in R.C.No.339 of 2000, dated 15.02.2000, as illegal and arbitrary and consequently to direct the respondents not to interfere with the building situated in T.S.No.442-part of Bheemunipatnam town and Mandal, Visakhapatnam District, the present writ petition has been filed.

2. It is the case of the petitioner that he purchased an extent of 686.356 square meters of open site in T.S.No.442 of Bheemunipatnam Town and Mandal, Visakhapatnam from Magunta Jitendra Das by way of Regd. Sale deed dated 05.08.1996 and subsequent thereto, he applied for permission to the first respondent for construction of a building in the said site, and permission was granted in B.A.NO.78 of 1999, dated 19.05.1999 after collecting necessary fee thereto. In pursuance of the said permission, the petitioner started construction of the building and 80 percent of the construction is completed. It is further contended by the petitioner that the first respondent issued proceedings in Roc.No.2405/99-G1, dated 23.08.1999 revoking the permission granted earlier, besides directing him to approach the director, SADA, Hyderabad for necessary approval. The said proceedings has been challenged by the petitioner in W.P.No.19778 of 1999 and the matter is pending consideration. It is further contended that the 2nd respondent issued show cause in R.C.No.339 of 2000:C, dated 15.02.2000 to the petitioner directing him to dismantle the existing structures in T.S.No.442/P stating that the building has come up within the purview of the coastal regulation zone and directed the petitioner to submit his explanation within 7 days. In pursuance thereto, the petitioner submitted his explanation. Assailing the said show cause notice, the present writ petition has been filed.

3. The second respondent filed a counter affidavit denying the allegations made by the petitioner. It is contended in the counter that while carrying on

construction of the building by the petitioner, the Visakhapatnam Urban Development Authority (for short 'VUDA') has observed the construction and issued a letter in Rc.No.927/99 G1, dated 09.08.1999 informing the 2nd respondent that the site in which the petitioner constructed a building has been included in C.R.Z-1 area in Coastal Zone Management plans approved for Bheemunipatnam by Government of India. The Director, Shore Area Development Authority (SADA) visited Bheemunipatnam and found that construction is in progress and he informed that the said construction is not permissible in C.R.Z.1 area and on instructions of the Director, SADA, the first respondent has revoked the permission granted earlier. Subsequent thereto, the Revenue Divisional Officer, Visakhapatnam has issued a show cause notice to the petitioner in Rc.No.339 of 2000, dated 15.02.2000 that the construction is in violation of the rules of coastal regulation zone as declared by the Government of India vide notification bearing S.No.114 (E), dated 19.02.1991. It is further contended in the counter that the petitioner has no idea regarding the Coastal regulation zone and if so, the petitioner should have stopped the construction when the permission was revoked by the first respondent. It is further contended that the petitioner made several additional constructions and swimming pool in violation of the sanctioned building plan, and therefore, the petitioner has clearly violated the conditions of C.R.Z.-1 and the notification dated 19.02.1991 under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 and rule 5(3) of the Environment (Protection) Rules, 1986 and hence, the writ petition is liable to be dismissed.

4. Heard the learned counsel for the petitioner as well as the learned standing counsel for the first respondent and the learned Government Pleader for Revenue.

5. It is not in dispute that the petitioner constructed a building in the land in question according to the sanctioned building permission and 80 percent of the construction of the building is completed. The main grievance of the petitioner is that after completion of the 80 percent of the construction, the first respondent issued a notice in Roc.No.2405/99-G1, dated 23.08.1999 revoking

the sanctioned plan stating that the land was notified under C.R.Z.I and it is not permissible to construct a building in C.R.Z.-1 area in Coastal Zone Management and the petitioner challenged the said proceedings in W.P.No.19778 of 1999.

6. Be that as it may, the second respondent has issued the impugned show cause notice to the petitioner informing that the land in question has come up within the Coastal Regulation Zone as declared by the Government of India, Ministry of Environment and Forest vide Notification No. S.O.No.114 (E), dated 19.02.1991 and it is not permissible for new constructions as it is prohibited activity as per C.R.Z. regulations.

7. In that view of the matter, before issuing the impugned proceedings, the 2nd respondent has to give notice to the petitioner. But no notice was given to the petitioner before issuing the impugned notice. On a careful perusal of the material on record, I find that the second respondent has not produced any record to show that the land in question is fall within the Coastal Regulation Zone. In the absence of any evidence, it cannot be said that the land in question is come under the purview of the Coastal Regulation Zone.

In that view of the matter, without expressing any opinion, I deem it appropriate to direct the petitioner to submit his explanation to the impugned notice and on filing of such application, the second respondent-Revenue Divisional Officer, Visakhapatnam is directed to consider the same and pass appropriate orders in accordance with law.

With the above observation, the writ petition is disposed of. No order as to costs.

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(ELIPE DHARMA RAO, J)

Date: 21.07.2005.

Ksn

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Bheemunipatnam Municipality,
   Bheemunipatnam, Visakhapatnam District.
2. The Revenue Divisional Officer, Visakhapatnam,
   Visakhapatnam,

3. 2 CCs to G.P. for Revenue, High Court Buildings, Hyderabad (OUT)

4. 2 CD copies

5. 1 CC to MR.SUDARSHAN REDDY

*Form-NIC-OGS/WP{**MSKM**}*